IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2162 of 1982
with
Civil Application No. 1160 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAHADURSINH MANUBHA VAGHELA
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 2162 of 1982
NOTICE SERVED for Petitioner No. 1,3,5
UNSERVED-EXPIRED (N) for Petitioner No. 2
NOTICE UNSERVED for Petitioner No. 4
MR AJ DESAI AGP for Respondent No. 1-2
MR HV CHHATRAPATI for Respondent No. 3
MR MI HAVA for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE A.M.KAPADIA

Date of decision: 02/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. By filing instant petition under Article 226 of the Constitution the petitioners have prayed to issue a writ of certiorari or any other appropriate writ, order or direction to quash the notifications dated January 25, 1979 and August 8, 1979 issued under Section 4 of The Land Acquisition Act, 1894 ('the Act' for short) as well as notification dated September 17, 1981 issued by the respondent No.1 under Section 6 of the Act for acquiring their lands. The petitioners have further prayed to direct the respondents to release the lands of the petitioners bearing S.No. 1722 and S.No.1762 situated in village Sanand, District Ahmedabad from acquisition. Further the petitioners have prayed to restrain the respondents from taking possession of their lands bearing S.No. 1722 from the petitioners Nos.1 and 2 pursuant to the issuance of notice under Section 9 of the Act.

2. The petitioners are owners of lands bearing S.No. 1722 and S.No. 1762 situated in village Sanand, District Ahmedabad. A proposal was mooted to acquire various parcels of lands for laying Kadi-Sanand-Bavla-Dholka road in the year 1968 which was opposed by persons belonging to village Sanand. On January 19, 1971 notification under Section 4 of the Act was published. Thereafter the petitioners and other affected persons were served with notices under Section 4 (1) of the Act. According to the petitioners, the acquisition of lands was made in such a manner that the parcels of the lands of the petitioners were divided into two parts rendering the eastern portion of the lands unfit for cultivation. The petitioners Nos.1 and 2 had filed their objections. The petitioners have claimed that in view of the contents of the objections, the site was visited by Land Acquisition Officer who had reported that there was no need to acquire the lands of the petitioners and, therefore, the acquisition proceeding were dropped in 1974. According to the petitioners, the action of the Government in dropping the land acquisition proceedings was not liked by one Mr. S.T. Patel, who was wielding great political influence and, therefore, at his instance the acquisition proceedings were again initiated and notification under Section 4 (1) of the Act was published on January 25, 1979 and August 8, 1979 after which the petitioners and others were served with notices under Section 4 (1) of

the Act. It is averred by the petitioners that the respondents thereafter issued notification under section 6 of the Act on September 17, 1981 after considering the report submitted by the competent authority under Section 5-A (2) of the Act and also issued notices under Section 9 (1) of the Act. The claim advanced by the petitioners in the petition is that the petitioners' lands have been acquired at the instance of Mr. S.T. Patel malafide and, therefore, the notifications are liable to be quashed. It is also asserted in the petition that the lands have not been acquired for public purpose and, therefore, acquisition is bad in law. Further it is mentioned that the respondents are not entitled to acquire their lands having dropped the earlier proceedings for acquiring their lands. Under the circumstances, the petitioners have filed instant petition and claimed the reliefs to which reference is made earlier.

3. On service of notice, Mr. K.J. Mistri, Executive Engineer, Panchayat Division, Ahmedabad has filed reply affidavit controverting the averments made in the petition. Supplementary affidavit in reply is also filed by him on August 23, 1982. The petitioners have filed affidavit in rejoinder controverting the averments made by Mr. Mistri in his two replies. Further Mr. D.K. Parmar, IInd Additional Special Land Acquisition Officer, District Ahmedabad has filed affidavit-in-reply to the rejoinder of the petitioners to which affidavit-in-rejoinder is also filed on behalf of the petitioners.

4. On elevation of the learned advocate of the petitioners on Bench, notices were issued to the petitioners calling upon them to make arrangement for their appearance either in person or through lawyer. The record of the case shows that the notices are duly served on petitioners Nos.1, 3 and 5 whereas notice issued to the petitioner No.2 could not be served as he has expired and notice issued to the petitioner No.4 has returned unserved as not found. As the petition is very old, that is, of the year 1982, the Court has decided to dispose of the same with the assistance of Mr. A.J. Desai, learned Assistant Government Pleader.

5. The main point canvassed in the petition is that the acquisition proceedings having been initiated at the instance of Mr. S.T. Patel, who was elected as the Chairman of Ahmedabad District Panchayat and who was wielding great influence on almost all the officers of the State Government, are liable to be set aside because

the proceedings were initiated to save lands belonging to him from being acquired. The affidavit in reply filed on behalf of the respondents would indicate that the lands belonging to Mr. S.T. Patel are also proposed to be acquired for the purpose of laying of Kadi-Sanand-Bavla-Dholka road. Further, Mr. S.T. Patel against whom malafides are alleged is not impleaded as party respondent in the petition and in view of the decision of the Supreme Court in All India State Bank Officers' Federation and others v. Union of India and others, (1997) 9 SCC 151, the allegations of malafides against him cannot be allowed to raise and will have to be ignored. Moreover, the charge of malafides against public bodies and authorities is very easily made than made out and it is the last refuge of a losing litigant. Since the allegations of malafides are likely to have serious consequences, sufficient particular and cogent material making out a prima facie case must be given in the petition. In our view, the petitioners have failed to lay firm foundation in support of their allegations of malafides and, therefore, the acquisition proceedings cannot be set aside on the ground that the lands of the petitioners have been acquired malafide at the instance of Mr. S.T. Patel.

6. The next contention that the lands have not been acquired for public purpose and, therefore, the acquisition proceedings should be quashed is merely stated to be rejected. It is well settled that the notifications under sections 4 (1) and (6) of the Act were issued prior to filing of the petition. The records of the case would show that the lands mentioned in the notifications have been acquired for the purpose of construction of road, which, by no stretch of imagination, can be regarded as a private purpose. The road which is to be constructed would be available for use to the residents of village Kadi, village Sanand, village Bavla and village Dholka. Therefore, there is no manner of doubt that the lands have been acquired for public purpose. The public purpose for which the lands in question are acquired meets the broad test laid down in Musamiyan Imam v. State, 12 GLR 1. Under the circumstances, the acquisition proceedings cannot be quashed on the ground that the lands have not been acquired for public purpose.

7. The last point raised in the petition that after dropping the acquisition proceedings, again the lands of the petitioners could not have been subjected to acquisition, is devoid of merits. There is no provision in the Act which prohibits the Government from acquiring

the land regarding which earlier proposal to acquire was dropped. The issuance of notification under section 6 of the Act is based on the report of the competent authority submitted under section 5-A (2) of the Act. The need for construction of the road hardly deserves to be emphasized. The Government is entitled to reconsider its previous decision to drop the acquisition proceedings relating to the lands in question and restart acquisition proceedings in view of different considerations prevailing at the time. In view of the explanation offered by Mr. Mistri, Executive Engineer, Panchayat Division, Ahmedabad in his supplementary affidavit in reply, it cannot be said that the decision of the Government to initiate the proceedings for acquisition of lands is bad in law.

8. On overall view of the matter, the Court is satisfied that the respondents have acted in a fair manner and they have not acted illegally or malafide while acquiring the lands of the petitioners. The petition is, therefore, liable to be dismissed.

9. For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. There shall be no orders as to cost. The interim relief granted earlier is hereby vacated.

10. As the main petition is dismissed, Civil Application No. 1160 of 1986 does not survive and is dismissed. Rule is discharged. There shall be no orders as to cost so far as the Civil Application is also concerned. Interim relief granted therein is also hereby vacated.

(J.M. Panchal, J.)

(A.M. Kapadia, J.)

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